IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 352 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MANSUKHLAL GOVINDBHAI VALA

Versus

PRABHABEN MANSUKLAL VALA

Appearance:

1. Criminal Revision Application No. 352 of 1999

MR GOHIL for MR CJ VIN for Petitioner No. 1

MR MRUGEN K PUROHIT for Respondent No. 1

MR PR ABICHANDANI, APP for State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/09/2002

ORAL JUDGEMENT

This Criminal Revision Application arises out of the judgement and order of learned Sessions Judge,

Rajkot, rendered in Criminal Revision Application No. 84 of 1998, preferred by present respondent No.1. The said Revision Application was preferred against judgement and order of learned Judicial Magistrate First Class, Jasdana in Criminal Misc. Application No. 53 of 1997, dated May 20, 1998. That was an application preferred by present respondents Nos. 1 and 2 against the present revisioner under Section 125 of Criminal Procedure Code, claiming maintenance. Learned Magistrate awarded maintenance to present respondent No.2 - minor Utsav, but rejected the prayer for maintenance by present respondent No.1 on the ground that there is no reason for her for not going and staying with present revisioner and as such there is no neglect on the part of the present revisioner in maintaining her. Learned Magistrate awarded Rs. 500/- towards maintenance to minor Utsav, respondent No.2 herein.

2. Aggrieved by the said judgement and order, present respondent No.1 had preferred Criminal Revision Application before Sessions Court and the Sessions Court by judgement and order impugned herein, accepted the said Revision Application and set aside the order of learned Magistrate refusing maintenance to respondent No.1. The Sessions Court ordered present revisioner to pay a maintenance of Rs. 500/- per month to respondent No.1 herein. Aggrieved by this order, revisioner has preferred this Revision Application.

3. Learned Advocate Mr. Gohil appearing for Mr. C.J.Vin for the revisioner submitted that learned Sessions Judge has committed an error in upsetting the order of learned Magistrate on the ground that there is no material to indicate that there was no neglect on the part of the husband. Mr. Gohil submitted that it is a case of word against word, there is evidence of Kesarben to indicate that respondent No.1 had gone to her parent house after Shrimant and she had not returned thereafter. There is positive assertion of the revisioner about a specific demand of Rs. 25,000/- by his father-in-law and refusal to send respondent No.1 until that demand is fulfilled. These aspects were properly considered by the learned Magistrate and learned Sessions Judge has ignored this piece of evidence while accepting the Revision Application. This Court therefore may entertain this Revision Application.

4. Learned Advocate Mr. Purohit appearing for respondents Nos. 1 and 2 has opposed this Revision Application. He has submitted that there are positive assertion on the part of respondent No.1 about

ill-treatment, driving her away after Shrimant. These assertions have not been challenged either in the cross-examination or in deposition of the revisioner. There is nothing to support the case of the revisioner that he had made attempts to call respondent No.1 after the delivery. Likewise, there is nothing to support his case about demand of Rs. 25,000/- by the father of respondent No.1. Mr. Purohit submitted that learned Sessions Judge has properly considered the evidence and has awarded maintenance to respondent No.1. He submitted that this being a Revision application where scope of it being very narrow, this Court may not interfere with the order and the revision may be dismissed.

5. Learned Additional Public Prosecutor Mr. Abichandani for the respondent No.3 State has opposed to this Revision Application.

6. Having regard to the rival side contentions and having gone through the depositions made available to this Court by learned Advocate Mr. Purohit, this Court is of the view that no interference is called for in the order impugned herein.

6.1 In deposition Ex. 10, respondent No.1 has categorically stated that she was driven out of the house bare handed. She also stated that after she was driven out of the house no attempts have been made to call her back by the revisioner. These assertions are not challenged in the cross-examination. Against this there is deposition of revisioner Ex. 14, wherein he stated that respondent No.1 was taken to her parental house after Shrimant ceremony, for delivery; that after she delivered a baby boy, his sister Manjuben and Madhuben had gone to her with silver articles and laddu as per customs. He then stated that there was Shrimant ceremony of his sister and they were supposed to go and therefore elderly people had gone to fetch respondent No.1, but that was denied on the ground of sickness of the baby boy.

He stated that his relations with respondent No.1 were good; that she wanted to come and stay with him but as stated by her on telephone, her elders in the family are not permitting to do so as they want to knock out some money from him. Then he stated that Rs. 25,000/was demanded by his father-in-law. He stated that when this demand was made, mother of the respondent No.1 was present.

6.2 It requires to be noted that it is customary that

ordinarily, delivery of a child is done at the parental house and accordingly respondent No.1 was sent to her parental house after Shrimant ceremony. As per say of the revisioner, she never came back thereafer although attempts were made to call her. This say of revisioner gets no support from any other evidence. Kesarben Ex.17 also does not say anything in this regard. All that she stated was that she knows that respondent No.1 was sent to her parental house after Shrimant. The case of the revisioner that respondent No.1 wanted to come and stay with him as per telephonic talk with her appears to be an after-thought for the reason that no suggestion to this effect was even made to respondent No.1 while cross-examining her. Likewise, the case of the revisioner that attempts were made to call respondent No.1 after the delivery by sending elders in the family for the purpose has also remained unsupported by any independent and contemporaneous evidence.

7. In view of above facts on record, this Court is not inclined to interfere with the findings of fact recorded by the Sessions Court in exercise of its revisional jurisdiction.

7.1 Though feebly an argument was made about quantum of maintenance and the income of the revisioner, there also the revisioner's income was taken at Rs. 2,000/-. REvisioner is a Commerce Graduate and adopting principle of ability to earn, the amount assessed by the Court below cannot be considered to be inflated one. Again this amount of Rs. 500/- awarded to respondent No.1 also cannot be considered as high, as Rs. 500/- these days would hardly be sufficient to fetch two square meals to the lady, forget about the other requirements of life. This being so, the Revision Application must fail and the same is dismissed. Notice is discharged.

(A.L.Dave, J.)

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